

| Supreme Court, U.S.
FILED

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No. _____
OFFICE OF THE CLERK

**In The
Supreme Court of the United States**

In Re DAVID R. SINA, Petitioner

**PETITION FOR A WRIT OF MANDAMUS TO THE
MINNESOTA SUPREME COURT, AND THE
HONORABLE PAUL H. ANDERSON, ASSOCIATE
JUSTICE OF THE MINNESOTA SUPREME COURT**

PETITION FOR WRIT OF MANDAMUS

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QUESTION PRESENTED

The Minnesota Supreme Court makes rules regarding bar examinations in Minnesota. The rules require that an application be filed and a filing fee be paid before the State Board of Law Examiners has authority to conduct a character investigation on anyone. Petitioner did neither, yet the State Board of Law Examiners issued a determination (order) that petitioner not be allowed to take the Bar Exam and/or be admitted to the Bar of the State of Minnesota. The question presented is:

1. Whether the Minnesota Supreme Court should be ordered to vacate and expunge from the record the Minnesota State Board of Law Examiners character investigation hearings of April 9, 1987 and April 25, 1988 and its Determination (Order) of April 4, 1989, on the grounds that the Board of Law Examiners acted without subject matter jurisdiction and issued a void Determination, as petitioner was a private citizen that had not made any application to take the Bar Exam nor had he paid any filing fee, both of which were required by their own rules.

PARTIES NOT NAMED IN CAPTION

1. The Honorable Paul H. Anderson
Associate Justice
Minnesota Supreme Court
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155
2. State Board of Law Examiners
380 Jackson Street
Suite 201
St. Paul, Minnesota 55101

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**Rule 100A, *Rules of the Supreme Court and State Board
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**Rule 104, *Rules of the Supreme Court and State Board
of Law Examiners for Admission to the Bar as
amended Oct. 1, 1986, Dec. 23, 1986 & Jan. 20, 1987 .1, 7***

OPINIONS BELOW

The judgment, transcript of judgment and order of the Minnesota Supreme Court denying petitioner's motion to vacate the State Board of Law Examiners Determination of April 4, 1989 (App., *infra*, A-1 to A-3), is unpublished. The Findings of Fact, Conclusions of Law and Determination of the State Board of Law Examiners dated April 4, 1989 (App., *infra*, A-4 to A-12), is unpublished.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. section 1651 (a) and 28 U.S.C. section 1257 (a) as it is a state court proceeding relating to admission to the Bar.

CONSTITUTIONAL PROVISIONS INVOLVED

The federal question involved is under the Fifth and Fourteenth Amendments to the United States Constitution. A complete discussion of the due process and equal protection issues is included in the section entitled Reasons for Granting the Writ.

STATEMENT OF FACTS

1. Petitioner applied to take the July, 1985 Bar Exam in the State of Minnesota, took the 1985 Bar Exam and was unsuccessful on it.

2. Petitioner has not filled out any application nor paid any filing fee to take any Bar Exam subsequent to the July, 1985 Bar Exam.

3. Rule 100E of the State Board of Law Examiners for Admission to the Bar requires any applicant who was unsuccessful on a prior Bar Examination to file a new application and to pay the proper fee as required by Rule 105. (Rules of the Supreme Court and State Board of Law

Examiners for Admission to the Bar as amended Oct. 1, 1986, Dec.23, 1986 and Jan. 20, 1987).

4. Rule 104 authorizes the Bar Board to conduct a hearing for background investigation only upon those who have filed an application and paid the filing fee as required by Rule III and Rule 100. (Rules of the Supreme Court and State Board of Law Examiners for Admission to the Bar as amended Oct. 1, 1986, Dec. 23, 1986 and Jan. 20, 1987).

5. On March 6, 1987, Bar Board director Margaret Fuller Corneille notified petitioner that the Board of Law Examiners has scheduled a formal hearing for April 9, 1987 "on your application" pursuant to Rule 104.

6. The Bar Board conducted it's first character investigation hearing on petitioner on April 9, 1987 and conducted a second character investigation hearing on April 25, 1988.

7. The Bar Board issued it's Determination (Order) on petitioner on April 4, 1989 where they stated that petitioner "... should not be allowed to take the Bar Examination and/or be admitted to the Bar of the State of Minnesota". (App., *infra*, A-4).

8. On December 23, 2003, Bar Board director Margaret Fuller Corneille wrote to petitioner and stated that "Our files contain no Bar application other than that which you filed for the July 1985 Bar Exam". (App. *Infra*, A-13).

9. On December 29, 2003, petitioner brought a motion in front of the Minnesota Supreme Court to vacate and strike from the record the April 9, 1987 and April 25, 1988 hearings and April 4, 1989 Determination (Order) of the Bar Board on the basis Minnesota Rule of Civil Procedure 60.02 (d) (Void Judgment). Petitioner filed an accompanying Memorandum of Law with his motion.

10. On January 29, 2004, the Minnesota Supreme Court, per the Honorable Paul H. Anderson, denied petitioner's motion to vacate (App., *infra*, A-3) and judgment was entered on March 8, 2004 based upon this order. (App., *infra*, A-1).

REASONS FOR GRANTING THE WRIT

I. The Minnesota Supreme Court failed to vacate a void determination of the State Board of Law Examiners.

Petitioner contends that the Order of denial by the Minnesota Supreme Court constituted an abuse of judicial power, a usurpation of power, and an improper failure to exercise its jurisdiction and authority when it had a duty to do so. Petitioner is a private United States citizen that had done nothing to invoke the jurisdiction of the State Board of Law Examiners, yet the Minnesota Supreme Court refused to vacate its void determination. Petitioner has no other adequate remedy to compel the Minnesota Supreme Court to enforce its own rules that it promulgated and established for the State Board of Law Examiners, for which the State Board of Law Examiners is required to follow. The refusal of the Minnesota Supreme Court to follow its own rules that it made for the State Board of Law Examiners is not remediable through the ordinary course of appeal or writ of certiorari. The Order of the Minnesota Supreme Court is one which this Court can and should correct by writ of mandamus.

Petitioner's writ for mandamus to this Court is a bar admission matter, for which bar admission matters may be brought only in the Supreme Court of the United States. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). Bar Board matters are judicial proceedings, which are reviewable by the Supreme Court of the United States. *District of Columbia Court of Appeals v. Feldman*, supra. When a bar admission claim is made in a state court and a denial of the right is made by judicial order, it is a case which may be reviewable under Article III of the Constitution when federal questions are raised and proper steps taken to that end, in this Court. *In Re Summers*, 325

U.S. 561, 567-569 (1945). Therefore, petitioner's writ of mandamus is properly reviewable by this Court.

This truly is an exceptional circumstance requiring this Court to compel the Minnesota Supreme Court to exercise its authority when it was its duty to do so. *Platt v. Minnesota Min. & Mfg. Co.*, 376 U.S. 240 (1964). The Minnesota Supreme Court had a duty to protect this private citizen petitioner from the actions of the State Board of Law Examiners for which they had no authority or jurisdiction over him. Mandamus is an extraordinary remedy, appropriately exercised where the lower court has improperly failed to exercise jurisdiction or has taken action amounting to a usurpation of power. *Kerr v. U.S. Dist. Court for Northern District of California*, 511 F. 2d 192 (C.A. 9 1975), affirmed 426 U.S. 394. Mandamus is appropriate to those situations where a lower court has taken action which it has no power to take or when the court has acted and so abused its discretion that there is a sort of usurpation of power which will justify entry of the writ. *U.S. v. Dorfman*, 690 F. 2d 1217 (C.A. 7 1982). The Minnesota Supreme Court has abused its discretion for failure to vacate hearings and a determination of the Board of Law Examiners against a private United States citizen, for which the State Board of Law Examiners had no authority or jurisdiction over him.

The Minnesota Supreme Court has the exclusive authority and jurisdiction to make any rules regarding the State Board of Law Examiners:

“The supreme court shall, by rule from time to time, prescribe the qualifications of all applicants for admission to practice law in this state, and shall appoint a board of law examiners, which shall be charged with the administration of the rules and with the examination of all applicants for admission to practice law.” *Minn. Stat. 481.01.*

The State Board of Law Examiners has no inherent jurisdiction. It only has jurisdiction conferred upon it by law or the Minnesota Constitution. *Carlson v. Chermak*, 639 N.W. 2d 886 (Minn. App. 2002); *Minn. Constitution Art. VI, Sections 1 & 5*. A determination of an administrative agency is void and subject to collateral attack where it is made without or in excess of statutory power. *McKee v. Ramsey County*, 245 N.W. 2d. 460 (1976). Where a court acts without authority or jurisdiction, its judgments and orders are regarded as nullities. *Burnham v. Superior Court of California*, 495 U.S. 604. They are not voidable, but simply void. *Elliott v. Peirsol*, 26 U.S. 328 (1828). The State Board of Law Examiners, as a Minnesota administrative agency, cannot disregard its own rules that the agency has properly adopted. Rules have the force and effect of law. *Springborg v. Wilson & Co.*, 73 N.W. 2d 433 (1956). There is a violation of due process when an administrative agency takes action that is beyond the scope of its own procedural regulations. *Berends v. Butz*, 357 F. Supp. 143 (D. Minn. 1973); *Red School House Inc. v. Office of Economic Opportunity*, 386 F. Supp. 1177 (D. Minn. 1974). The courts have a duty to protect constitutional or fundamental rights from infringement by administrative agencies. *Buettner v. City of St. Cloud*, 277 N.W. 2d 199 (Minn. 1979). The Supreme Court can interfere with the conclusions of an administrative agency where an agency has violated a constitutional provision or has not kept within its jurisdiction. *Bryan v. Community State Bank of Bloomington*, 172 N.W. 2d 771 (1969).

When petitioner brought his motion to vacate to the Minnesota Supreme Court, he called to the courts attention in his Memorandum of Law the violations of federal law and federal questions that the State Board of Law Examiners made which denied him of due process and equal protection under the Fifth and Fourteenth Amendments to the United States Constitution. Petitioner stated to the court on page 5 of his Memorandum that "There is a violation of due process

when an administrative agency acts beyond the scope of its own procedural regulations." Petitioner stated to the court on page 7 of his Memorandum that "A judgment is void if the court that rendered judgment lacked jurisdiction of the subject matter, or acted in a manner inconsistent with due process; U.S.C.A. Const. Amend.5." Petitioner stated to the court on page 8 of his Memorandum that " The failure to provide a litigant a fair and impartial tribunal before which to adjudicate his private rights is in the violation of the due process clause of the United States Constitution, Amendment XIV." Petitioner stated to the court on page 14 of his Memorandum that " The Fourteenth Amendment to the United States Constitution prohibits states from abridging privileges and immunities of the citizens of the United States and from depriving persons of due process of laws or equal protection of the laws; United States Constitution, Amendment XIV." Petitioner stated to the court on page 15 of his Memorandum that " The State of Minnesota had a responsibility to provide David with the constitutional guarantee of due process and equal protection of the laws and had an obligation to protect David, as a member of the public, from harm (past, present and future) from overreaching and illegal activities of its agents or representatives under its control or policing powers (attorneys as court officers, judges, administrative agencies, etc.)."

Petitioner also pointed out to the Minnesota Supreme Court that the State Board of Law Examiners had no authority to disregard its own rules and conduct 2 character investigation hearings and issue a determination (App., *infra*, A-4), based upon these hearings where petitioner had made no application nor paid any filing fee to take the bar exam. Petitioner was a private United States citizen. He was not an applicant to take any bar examination, and, as such, was not under the jurisdiction of the State Board of Law Examiners for them to conduct any character investigation hearings on him nor for them to issue any kind of order that prevented

him from taking the bar exam again or practicing law in Minnesota.

The State Board of Law Examiners is only authorized to conduct character investigation hearings on applicants for the Bar Exam:

“Authority. The Board is authorized:

(5). To conduct or cause to be conducted investigations of applicant background as may be reasonably related to fitness to practice...”

(Rule I-Rules of the Supreme Court and State Board of Law Examiners for Admission to the Bar as amended Oct. 1, 1986, Dec. 23, 1986 and Jan. 20, 1987).

The State Board of Law Examiners is bound by the Rules of the Supreme Court and State Board of Law Examiners for admission to the Bar. *Minn. Stat. 481.01, supra.* The State Board of Law Examiners was bound to follow Rule 104E in order to have subject matter jurisdiction to conduct a character investigation hearing on petitioner. Rule 104E states:

“**Repeat Examinee.** An applicant who has been unsuccessful on a prior Minnesota Bar Examination shall submit an application timely presented at the Office of the Director accompanied by:

1. The proper fee as indicated in Rule 105.”

(Rules of the Supreme Court and State Board of Law Examiners for Admission to the Bar, supra).

Rule 100 A further state what a complete application is:

“ **Complete Application.** A person desiring admission to practice law in Minnesota shall submit a typewritten application on a form prescribed by the

Board. To be accepted the application must be timely presented at the office of the Director and be accompanied by:

1. The proper fee as indicated in Rule 105.”
(*Rules of the Supreme Court and State Board of Law Examiners for Admission to the Bar, supra*).

Petitioner did not file any application with the State Board of Law Examiners since he filed an application for the July 1985 Bar Exam. The Bar Board rules require a new application be filed each time that the bar exam is taken. After petitioner had sent many letters over the years to the State Board of Law Examiners telling them that he had not filed an application nor paid any filing fee since he took the July 1985 bar exam, State Board of Law Examiners director Margaret Fuller Corneille finally acknowledged in her Dec. 23, 2003 letter to petitioner that:

“Our files contain no bar application other than that which you filed for the July 1985 bar exam.” (A-13).

Since the State Board of Law Examiners was bound to follow the rules prescribed by statute, and it failed to follow such rules, it acted beyond the scope of it's authority and acted without subject matter jurisdiction. *McKee v. Ramsey County, supra*. It has long been the rule that a valid judgment imposing a personal obligation or duty in favor of plaintiff may be entered only by a court having jurisdiction over the person of the defendant. *Kulko v. Superior Court of California in and For the City and County of San Francisco*, 436 U.S. 84 (1978). Since petitioner had not filed any application to take the Bar Exam after July 1985 nor paid any filing fee, he was not an applicant to take any Bar Exam and the State Board of Law Examiners had no jurisdiction over him and it's Determination (App., *infra*, A-4) must be considered void. Petitioner brought his motion to the

Minnesota Supreme Court to vacate the void determination of the State Board of Law Examiners only 6 days after Bar Board director Margaret Fuller Corneille told petitioner in writing that he had not filed any application with them. A void judgment is one where the court lacks jurisdiction over the subject matter or over the parties. *Lange v Johnson*, 204 N.W. 2d 205 (1973). If a judgment is void, relief should be granted therefrom on motion. *Marquette Corp. v. Priester*, 234 F. Supp. 799 (D.C.S.C. 1964). The right to relief from a void judgment is absolute and not a matter for the court's discretion. *Chambers v. Armontrout*, 16 F. 3d 257, (C.A. 8 Mo. 1994). The Minnesota Supreme Court abused its discretion by not granting petitioner's motion to vacate the April 9, 1987 and April 25, 1988 hearings and April 4, 1989 Determination of the Board of Law Examiners because they were void.

CONCLUSION

For the foregoing reasons, petitioner prays:

1. That a writ of mandamus issue from this Court directed to the Honorable Supreme Court of the State of Minnesota, and to the Honorable Paul H. Anderson, Associate Justice of said Court, requiring said Honorable Paul H. Anderson, to show cause on a day to be fixed by this Court why mandamus should not issue from this Court directing said Honorable Paul H. Anderson, to vacate and expunge from the record the April 9, 1987 and April 25, 1988 character investigation hearings conducted on this private citizen petitioner by the Minnesota State Board of Law Examiners, and it's subsequent Determination (Order) dated April 4, 1989 which ordered that "The Board of Law Examiners recommends that David R. Sina has not established good character and fitness, and has participated in the unauthorized practice of law and should not be allowed to take the Bar Examination and/or be admitted to the Bar of the State of Minnesota."

2. That petitioner have such additional relief and process as may be necessary and appropriate in the premises.

Dated: November 30, 2005.

Respectfully submitted,

David R. Sina
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(651) 484-4303

Petitioner Pro Se

STATE OF MINNESOTA
IN SUPREME COURT

Appellate Court # A032061

In re Petition of David R. Sina to Vacate
Decision of Board of Law Examiners

JUDGMENT

Pursuant to a decision of Supreme Court duly made and entered, it is determined and adjudged that the decision of the Board of Law Examiners herein appealed from be and the same hereby is denied and judgment is entered accordingly. A certified copy of the entry of judgment and the court's decision is herewith transmitted and made part of the remittitur.

Dated and signed: March 8, 2004

FOR THE COURT

Attest _____
Frederick K. Grittner
Clerk of the Appellate Courts

By: s/ _____
Assistant Clerk

STATE OF MINNESOTA

SUPREME COURT

TRANSCRIPT OF

JUDGMENT

I, Frederick K. Grittner, Clerk of the Appellate Courts, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

*Witness my signature at the
Minnesota Judicial Center,*

*In the City of St. Paul,
March 8, 2004*

Dated

*Frederick K. Grittner
Clerk of the Appellate Courts*

By: s/ _____
Assistant Clerk

STATE OF MINNESOTA
IN SUPREME COURT

A03-2061

In re Petition of David R. Sina to Vacate
Decision of Board of Law Examiners

ORDER

Based upon all the files, records and proceedings
herein,

IT IS HEREBY ORDERED that the motion of David
R. Sina to vacate the April 4, 1989 decision of the Board of
Law Examiners in the above entitled matter be, and the same
is, denied.

IT IS FURTHER ORDERED that the motion of
David R. Sina to strike the Director's response be, and the
same is, denied.

Dated: January 29, 2004.

BY THE COURT

s/

Paul H. Anderson
Associate Justice

GILBERT, J., took no part in the consideration or decision of
this case.

STATE OF MINNESOTA
STATE BOARD OF LAW EXAMINERS
FOR ADMISSION TO THE BAR

IN RE: DAVID R. SINA

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DETERMINATION

A formal hearing was held by the State Board of Law Examiners under Rule 104 of the Rules of the State Board of Law Examiners on April 9, 1987 at 317 Washington Street, St. Paul, Minnesota and April 25, 1988 at the Decathlon Club, Bloomington, Minnesota, Hennepin County, Minnesota. David R. Sina was present at both hearings and represented by attorney Louis J. McCoy, and the Board of Law Examiners was present and represented by Theodore J. Collins, Buckley, Sauntry & Haugh, W-1100 First National Bank Building, St. Paul, Minnesota.

At the first day of the hearing on this matter on April 9, 1987, Findings of Fact were prepared by then counsel for the Board of Law Examiners, Mark Levinger and counsel for David R. Sina, Louis J. McCoy. The Board of Law Examiners reviewed each set of Findings, but did not adopt either set. Thereafter, present counsel for the Minnesota State Board of Law Examiners petitioned the Minnesota State Board of Law Examiners to re-open the hearing so that the Board of Law Examiners and the applicant David R. Sina could present additional evidence, exhibits, and provide a further factual basis for the Board to adopt the Findings of Fact, Conclusions of Law and Determination required by the Rules of the Board of Law Examiners for admission to the Bar of the State of Minnesota.

At the April 25, 1988 hearing, the Board reviewed Exhibit "M" and pursuant to Subpoenas requested by

counsel for the Board, heard witnesses Honorable Hyam Segell and Frank T. Mabley who appeared for examination and cross-examination.

The applicant after cross-examining the witnesses Segell and Mabley was sworn and gave additional testimony using Exhibit "M" which summarized litigation brought by or involving David R. Sina and/or his present wife Candice Sina. In addition to the Exhibit "M" (a summary of the Sina litigation), additional Exhibits were introduced as follows:

Exhibit D Frank T. Mabley December 18, 1986 correspondence to Ms. Lenora A. Johnson, Administrator, Minnesota Board of Law Examiners. (This Exhibit was previously identified at the April 9, 1987 hearing as Exhibit G).

Exhibit G Deposition of Frank T. Mabley taken on September 8, 1986. (Page 24 of this Exhibit was previously identified at the April 9, 1987 hearing as part of Exhibit B).

Exhibit N Memorandum in Support of Partial Summary Judgment by Mr. Mabley dated November 4, 1985 and Memorandum in Support of Merger and Partial Summary Judgment by Mr. Mabley dated November 18, 1985. (This Exhibit was previously identified at the April 9, 1987 hearing as part of Exhibit B).

Exhibit O Judge Hyam Segell's Order and Memorandum dated December 19, 1985 in Ramsey County District Court, file no. 475638. (This Exhibit was previously identified at the April 9, 1987 hearing as part of Exhibits B and G).

Exhibit O-1 Judge Hyam Segell December 18, 1985 correspondence to Ms. Marcia Proctor, Executive Director, State of Minnesota Board of Law Examiners. (This Exhibit was previously identified at the April 9, 1987 hearing as Exhibit F).

The following list of Exhibits were received at the April 9, 1987 hearing:

Exhibit A Letter of March 17, 1987 to Mr. Louis J. McCoy from Mr. Mark B. Levinger. (The Board of Law Examiners' Exhibit).

Exhibit B Bound volume of documents numbered 1 through 59 with David Sina's response to the issues at hand. (David Sina's Exhibit).

Exhibit C,D Correspondence dated February 3, 1987 to Mr. McCoy from Mr. Mabley and correspondence dated March 17, 1987 to Mr. Sina from Mr. Mabley. (The Board of Law Examiners' Exhibit).

Exhibit E An appeal decision on the case of David R. Sina v. Janet Sina, dated March 10, 1987. (The Board of Law Examiners' Exhibit).

Exhibit F Correspondence dated December 18, 1985 to Marcia Proctor from Judge Segell. (The Board of Law Examiners Exhibit).

Exhibit G Correspondence dated December 18, 1986 from Mr. Mabley to Ms. Lenora Johnson with attachments A through J. (This is Mr. Mabley's Exhibit).

The following list of witnesses testified at the April 9, 1987 hearing:

David R. Sina

Gerald S. Rufer, President of the Minnesota Board of Law Examiners was present during both hearings in this case and during the Board's consideration of the proposed Findings and Conclusions. Although retired from this

position as of December 31, 1988, he approved these findings.

Based upon the testimony and the exhibits received at the hearing on April 9, 1987 and April 25, 1988, and upon all the files, records and proceedings herein, and review of the transcript by the Board members, the Board of Law Examiners makes the following:

FINDINGS OF FACT

I

David R. Sina is 42 years of age, has completed the educational requirements for admission to the Bar of the State of Minnesota, but after four attempts has not yet achieved a passing score on the written examination administered by the Board of Law Examiners.

II

David R. Sina and his current wife, Candice Sina, formerly known as Candice Barr, have been involved in eighteen separate lawsuits for which there are twenty-four court files in the Minnesota Court of Appeals, Ramsey County District Court, Ramsey County Conciliation Court and Ramsey County Municipal Court. Out of the eighteen cases, six are actions brought by Candice Sina, four of which are defamation actions. Five of the eighteen cases are brought by David Sina, three of which are defamation actions. Four of the eighteen cases are collection cases against David R. Sina. The remaining three cases are family court matters surrounding the Barr dissolution, the Sina dissolution, and a domestic abuse petition filed by Candice Sina's ex-husband, John Barr. (Exhibit "M").

III

Of the seven defamation actions brought in District Court and Conciliation Court by David R. Sina and/or Candice Sina awards were ordered for the Defendant in six of those seven cases. The only defamation action brought by either of these two individuals wherein an award was found for the Plaintiff (Candice or David Sina) was Ramsey County Conciliation Court File No. 104189, Candice Sina v.

John Barr. In this case Ms. Sina sued Mr. Barr in the amount of \$1,266. The award for the Plaintiff was in the amount of \$50.00, (Exhibit M-IIID).

IV

Most if not all of the litigation has taken place over the past seven years. The majority of the litigation relates to the Sina marriage dissolution and child custody case and the Barr marriage dissolution and child custody cases. Ms. Heaberlin, David Sina's previous wife, was awarded physical custody of the Sina children. Mr. Barr, Ms. Sina's previous husband, was eventually awarded physical custody of her children. The seven defamation actions brought against Mr. Barr, Ms. Heaberlin and Ms. Heaberlin's attorney, Mr. Mabley, by Candice and/or David Sina were brought primarily as a result of issues brought out in the family court matters. (Exhibits M-IID and E).

V

The defamation actions which David R. Sina has brought against Ms. Heaberlin and Mr. Mabley are very similar in nature, legal theory and writing style to those cases brought by Candice Sina against Mr. Barr, Ms. Heaberlin and Mr. Mabley. Specifically pleadings filed in Ramsey County District Case Nos. 475639, 475638, 470610 and Ramsey County Conciliation Case Nos. 104166, 104165, 104188 and 104189. (Exhibits M-IIA, B and F, and IIIA, B,C and D). The Statement of the Case filed in Ramsey Conciliation Court file no. 104189 (Exhibit M-IIID) contains the handwriting of both David R. Sina and Candice Sina. The writing style is very similar in all the defamation actions and in some cases almost exact. Mr. Sina has admitted that he has drafted pleadings for Ms. Sina in legal matters. The pleadings which were admittedly drafted by Mr. Sina were signed by Candice Sina, pro se. By drafting pleadings and other legal documents for his wife before and after their marriage in matters in which he is not a Plaintiff, Mr. Sina participated in the unauthorized practice of law in violation of Minn. Stat. 481.02 (1986).

VI

Ramsey County District Court Judge Hyam Segell, the author of the Order dated December 19, 1985, received as Exhibit O, and the author of a letter to the Board of Law Examiners dated December 18, 1985, received as Exhibit O-1, testified to his opinion that David R. Sina had initiated frivolous and baseless litigation and should not be admitted to practice.

VII

The Order and Memorandum drafted by Judge Segell dated December 19, 1985, was reviewed by Judge Gordon Shumaker on October 16, 1987 (Exhibit M-IIB). Judge Shumaker wrote "this Court is persuaded that his conclusion as to vexatious litigation was not without some basis in the evidence."

VIII

Mr. Frank Mabley, attorney for Ms. Heaberlin, in the family court cases and in the many defamation actions brought against her and a named party in one defamation action, was the author of Exhibit G received in evidence on April 9, 1987 and testified on April 25, 1988 that the actions of the applicant David R. Sina were frivolous, malicious and constitute harassment.

IX

The majority of the suits brought by David R. Sina and/or Candice Sina resulted in awards adverse to the Plaintiffs, David R. Sina or Candice Sina, and in favor of the Defendants. For example, Ramsey County District Case No. 475639, has an Order in favor of Defendant in the amount of \$8,602.00 (Exhibit M-IIA) and in Ramsey County District Case No. 472476 an Order was entered in favor of Defendant in the amount of \$5,010.81 (Exhibit M-IIC). In Ramsey County District Case No. 475638, a Motion of Candice and David Sina to vacate Order was denied and attorney's fees were awarded to Mr. Mabley. (Exhibit M-IIB). Candice and David Sina appealed this matter. It was dismissed by the Minnesota Court of Appeals on January 12, 1988. (Exhibit

M-IC). In Conciliation Court Case Nos. 104166, 104165, 104188 and 105553 (Exhibits M-IIA,B,C,D, and E) all defamation actions brought by David R. Sina and Candice Sina, judgments were entered for Defendant.

X

David R. Sina had judgments entered against him in collection matters, for example, Ramsey County District Case No. 470610 (Exhibit M-IIIG) satisfied in July, 1984, Ramsey County Conciliation Case No. 105682 (Exhibit M-IIIH) satisfied in May, 1986 and Ramsey County Conciliation Case entitled United Medical Center v. David Sina (Exhibit M-IIIG) satisfied April, 1986. There is a present judgment against Mr. Sina in the amount of \$12,284.57 in the matter Norwest v. David R. Sina, Ramsey County Municipal Court, File No. 290571. (Exhibit M-III). Further, David R. Sina testified on April 25, 1988, that he is presently in arrears in child support for his children. He has not paid any child support for six to eight months and has judgments against him for child support payments previous to that. This was confirmed by the testimony of Mr. Mabley.

XI

That David R. Sina, in Answer to Interrogatories dated April 19, 1986, responded untruthfully when he answered "none" to the following interrogatory propounded in connection with the Matter in Re Marriage of David R. Sina vs. Janet A.G. Sina:

Identify all employers or others who have paid or committed themselves to pay any fund to you as wages, fees, commissions, expenses, purchase price or for any other reason since February 1, 1986, and the answering of the Interrogatories.

Applicant later testified at the hearing that he was employed as of April 1, 1986.

XII

That David R. Sina by harassing, vexatious and frivolous legal proceedings demonstrated a failure to

understand the legal system of Minnesota and the role of the lawyer and the place of advocacy in the justice system.

XIII

That David R. Sina lacks understanding of the use of litigation in dispute resolution and by the conduct displayed in Exhibits M and N, David R. Sina demonstrates a lack of judgment to practice law in those matters where he could practice pro se and David R. Sina by adopting and defending such conduct done pro se, demonstrates a lack of good character and fitness to practice law in Minnesota.

CONCLUSIONS OF LAW

1. David R. Sina, by drafting pleadings for his wife, Candice Sina, has committed the unauthorized practice of law in violation of Minn. Stat. 481.02 (1986).

2. David R. Sina, by bringing frivolous litigation for malicious reasons and being involved in extensive and unnecessary litigation over such a short period of time and failing to acknowledge the seriousness of his actions, and by his conduct established by the witness, Honorable Hyam Segell and Mr. Frank Mabley, David R. Sina has demonstrated that he lacks the requisite character and fitness required by Rule IIA(2) of the Minnesota Rules for Admission to the Bar of the State of Minnesota.

3. David R. Sina has displayed continuous bad judgment and irresponsibility not only in his many, many lawsuits, but also in the collection matters and judgments which have been entered against him, including judgment in the amount of approximately \$12,000. Such irresponsibility and bad judgment is but emphasized by his present and past child support arrearages and judgments.

4. David R. Sina has demonstrated that he lacks the requisite candor and truthfulness required of a member of the bar by failing to honestly answer Interrogatories in his divorce action which sought information about his current employment.

DETERMINATION

The Board of Law Examiners recommends that David R. Sina has not established good character and fitness, and has participated in the unauthorized practice of law and should not be allowed to take the Bar Examination and/or be admitted to the Bar of the State of Minnesota.

Dated this 4th. day of April, 1989.

BY THE BOARD OF LAW EXAMINERS

By:s/ _____ By:s/ _____
Carl Baer Mary P. Walbran

By: s/ _____ By: s/ _____
Honorable Isabel Gomez Joseph R. Cade

By:s/ _____ By:s/ _____
Richard H. Kyle John D. Kelly

By:s/ _____ By:s/ _____
Frank B. Wilderson Jr. Catherine M. Warrick

SUPREME COURT OF MINNESOTA
BOARD OF LAW EXAMINERS
Galtier Plaza, Suite 201
380 Jackson Street
St. Paul, Minnesota 55101

December 23, 2003

Mr. David R. Sina
9404 Parkside Cir. N.
Champlin, MN 55316

Dear Mr. Sina:

After receiving your letter of December 18, 2003, I have asked my staff to again review your application in an effort to locate the items that you requested.

Our files contain no bar application other than that which you filed for the July 1985 bar exam.

We are not able to locate a list of exhibits presented to the Board at the April 1987 hearing. You may be able to obtain a copy of the exhibits from the court reporter. Our records indicate that the court reporter was Nancy A. Smith of Weldon & Associates Court Reporters. The current address and phone number for Weldon & Associates is 1930 Cardinal Drive, Shakopee, Minnesota 55379, Telephone #952-445-0009.

There is only one copy of the transcript for the 1987 hearing in our file, but you should be able to obtain a transcript from Weldon & Associates.

I am sorry we cannot be of more assistance. If you have any questions, please feel free to contact me.

Very truly yours,

MINNESOTA BOARD OF LAW EXAMINERS
s/ Margaret Fuller Corneille, Director